

FINAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3000, 3261.1, 3261.2, 3261.4, 3261.5, 3261.7, and 3267 of the California Code of Regulations (CCR), Title 15, concerning Public Information, Community Relations and Media Access.

It is the policy of the CDCR to make known to the public, all relevant information that pertains to its operations, facilities and inmates and/or parolees who are under its jurisdiction. For the purpose of these regulations, inmates are defined as a person under the jurisdiction of the Secretary of the CDCR and not paroled. This information is passed on in many ways which includes, but is not limited to, the news media in addition to contact with public groups, individuals, and public officials. However, because consideration is always given to any factor(s) which might threaten the safety of any departmental facility or unnecessarily intrude upon the personal privacy of inmates and/or staff, the Department has determined that it is necessary to update its regulations that pertain to public information, community relations and the access of the news media to facilities, inmates and staff.

These regulations also include additional changes made to the originally proposed text. After the notification and public comment period, it was determined by the Department that additional clarification to the regulations was needed. One change includes the amending of text that referenced “media representative.” This was necessary because with these revised regulations now providing a new definition for “news media representative” and “non-news media representative,” the existing definition and multiple references to “media representative” was no longer consistent with the new definitions as described. In addition, in accommodation to a commenter who responded within the original 45 day comment period, Section 3261.2 was amended for the purpose of updating the text concerning the authorized release of information and to bring it into compliance with the federal Health Insurance Portability and Accountability Act (HIPPA). These changes to the originally proposed text were provided in the 1st 15-Day Renotice with the effective comment period of January 28, 2008 through February 15, 2008.

After completion of the 15-Day Renotice, it was determined that additional text changes were still needed for clarity, consistency and to remove duplication. This included revision to the CDC Form 146 (Rev. 7/91), Inmate Declaration to News Media Contact, referenced in renumbered subsections 3261.5(j), 3261.5(k), and 3261.7(c)(1). Now consistent with the amended regulations, the revised form, CDCR Form 146 (Rev. 06/08), Inmate Declaration to News Media Contact, is incorporated by reference into these regulations. For review, the amended text along with a copy each of the revised CDCR Form 146, and the former CDC Form 146 were made available in a 2nd 15-Day Renotice. The 2nd 15-Day Renotice was forwarded to the original 10 commenters who provided comment during the original 45 day comment period, and was also posted to the CDCR’s internet and intranet webpages. The 2nd 15-Day Renotice comment period was effective June 23, 2008 through July 10, 2008.

Lastly, because there are over 1,400 forms for use within the Department and its adult operations, with the vast majority of these forms used by staff and/or internal management, the Department pursuant to CCR, Section 20(c)(1) has determined that it would be impractical, cumbersome and unnecessary to publish this form in the CCR. With an established form ordering and distribution process already in place, staff would have no need for, and would not utilize the CCR in order to have access to this form. As is the case with the referenced CDCR Form 146, staff already have the ability to obtain and distribute the form as necessary.

3000. Definitions.

Section 3000 is amended to delete the current definition of “media representative” which is not consistent with the new definitions of “news media representative” and “non-news media representative” as provided in subsections 3261.5(a)(1) and (a)(2). This change to the originally proposed text was provided in the 1st 15-Day Renotice.

In addition, to correct an inadvertent omission from the previous text copies, the 2nd 15-Day Renotice text included the current section 3000 authority and reference citation, which remained unchanged.

3261.1. Media Access to Facilities.

Subsection 3261.1(a) is amended. In the originally proposed text to clarify the approval authority for media representative access, amended text provided that media representative access to Department facilities or contract facilities shall require the prior approval of the institution head or the Assistant Secretary of Communications or designee and that each media access request will be provided an initial response back within two working business days by the institution head or the Office of Public and Employee Communications. For editorial researchers, free-lance writers, authors of books, film makers, or other persons, authorized access to a facility would be only with the approval of the institution head and the Assistant Secretary of Communication or their designee. Additional language provided that in order to deny a request for news media representative access, the institution head shall secure advance authorization from the Secretary, or designee.

After closure of the initial comment period, it was determined that a change to the originally proposed text was needed to correct a conflict arising from the current reference of media representative versus the new definitions of news media representative and non-news media representative. For consistency and correction, any reference to media representative was amended to reflect news media and non-news media representatives with reference to the definitions provided in subsections 3261.5(a)(1) and (a)(2). These changes were provided in the 1st 15-Day Renotice.

After completion of the 15-Day Renotice, it was determined that changes were still needed. In the 2nd 15-Day Renotice, the text “to a department facility or contract facility” had been relocated for more appropriate placement. The word “either” was added to clarify that access to a departmental facility or contract facility for a news media representative requires prior approval of either the institution head or the Assistant Secretary of Communications. Since the verification process is easier for news media representatives, both approvals are not required. Also, a new second sentence was provided which relocated in part within this subsection, text specifying that access to a department or contract facility for a non-news media representative as defined in subsection 3261.5(a)(2), shall require prior approval of both the institution head and the Assistant Secretary of Communications or their designees. This change now clearly provides what are the approval requirements for both news media and non-news media representatives.

Additionally, to clarify and correct language concerning who would receive an initial response back from an access request to an institution, the 2nd 15-Day Renotice contained amended text providing that for each access request from a news media representative or a non-news media representative, as defined in subsection 3261.5(a)(2), the institution head or the Office of Public and Employee Communication will provide an initial response back within two (2) working days. This change was necessary to clarify that both news media representatives and non-news media representatives will receive an initial response back within two (2) working days.

Lastly, in the 2nd 15-Day Renotice, the meaning of “Secretary” within this section was clarified and expanded. Additional text now specifies that it is the Secretary of the California Department of Corrections and Rehabilitation (CDCR) or designee.

Subsection 3261.1(a)(1) is amended. In the original proposed text, for correction, reference to the abolished position of “Director” of the former Department of Corrections was deleted and replaced with the “Secretary” of the CDCR. For clarification, the text “or designee” was added to now read “Secretary, or designee” to specify who is responsible for providing prior approval.

In the 2nd 15-Day Renotice, additional clarification to the meaning of Secretary was provided by adding “of the CDCR” so that the text now reads “the Secretary of the CDCR.”

New subsection 3261.1(a)(2) is adopted. For the purpose of safety to each institution and to clarify who has authority, new language provides that should any media representative(s) access to a facility constitute an immediate threat to safety and security, or generate serious operational problems, the institution heads may impose limitations on or set conditions for such access. In addition for clarity and consistency, changes to the originally proposed text were made to now specify news media and non-news media representative instead of just media representative. These changes were provided in the 1st 15-Day Renotice.

In the 2nd 15-Day Renotice, the reference to “institution heads” was corrected and clarified by specifying that “the institution head or designee” may impose limitations on or set conditions for news media or non-news media representative access to a facility. The reference to only one institution head is the correct reference and that a designee to the institution head is generally appointed and ready to assume duties in the event the institution head is not available.

Subsection 3261.1(b) is amended. In the originally proposed text for clarity, parentheses were added to the letter “s” in the word representative(s).

In the 1st 15-Day Renotice, for clarification and text consistency, changes to the originally proposed text were made to now specify news media and non-news media representative.

After the 1st 15-Day Renotice, it was determined that additional changes were needed to remove duplication and a potential conflict with the originally proposed subsection 3261.5(e)(2), which has subsequently been deleted. The primary duplication and potential conflict concerned news media and non-news media representatives and their supervision within a facility. To correct this, in the 2nd 15-Day Renotice, appropriate text from subsection 3261.5(e)(2) was relocated and incorporated into this subsection which now provides that “within a facility, except as required by subsection 3261.5(b), news media and non-news media representatives shall be under the direct supervision of the facility’s or regional Public Information Officer or their designee as determined by the institution head.” Provided in this text as an exception, subsection 3261.5(b) concerns “visiting” and the rules and requirements that must be followed.

Subsection 3261.1(c) is amended. In the originally proposed text for the purpose of providing the correct reference to the execution chamber, the word “gas” was replaced with “execution.” Also in the original text, to correctly show the title of the current head of the Department, reference to the abolished position of “Director” of the former Department of Corrections was replaced with the “Secretary” of the CDCR. The text “or designee” was added to now read “Secretary or designee” which clarified who is the authority for approval.

In the 1st 15-Day Renotice, for clarification and text consistency, changes to the originally proposed text were made to now specify news media and non-news media representatives instead of just media representative.

After the 1st 15-Day Renotice, it was discovered that there was duplication and conflict with subsection 3261.5(e) concerning the reference to “security housing units” and approval authority to access. To correct this, in the 2nd 15-Day Renotice, reference to “security housing units” has been deleted from this subsection, with the text “security housing units” remaining in subsection 3261.5(e). One other change to

this subsection includes the clarification of word “Secretary” by expanding its meaning to now specify “Secretary of the CDCR.”

Section 3261.1 authority and reference citation is changed to correct a non-substantive typographical error presented in the originally proposed text and the 1st 15-Day Renotice text. In the 2nd 15-Day Renotice, the lower case “s” has been changed so that it now appears in upper case “S” in the word “Section” before the numbers 5058 and 5054.

3261.2. Authorized Release of Information.

Subsection 3261.2(a) is unchanged.

Subsection 3261.2(b) is amended for the purpose of updating existing text concerning information disclosure and to bring it into compliance with HIPPA. Specific reference to Acquired Immune Deficiency Syndrome (AIDS) was deleted and replaced with “any protected health information that identifies an individual without a valid written authorization from the individual.” These changes which were provided in the 1st 15-Day Renotice, were made in accommodation to a written comment provided during the initial public comment period.

In the 2nd 15-Day Renotice, a typographical error which appeared in both the originally proposed text and 1st 15-Day Renotice text, was corrected. In the last part of the deleted sentence, the word “of” has been replaced with the correct word “or” so the text correctly reads “the name or other identifying information “of” any person as having Acquired Immune Deficiency Syndrome (AIDS).”

Subsection 3261.2(c) is amended for correction. In the originally proposed text, the acronym CYA for the abolished California Youth Authority was replaced with the text “Division of Juvenile Justice (DJJ).” This was necessary in order to correctly reflect the current CDCR organization. Also for correction, the word “section” was changed to read “subsection” as 3261.7(c)(3) is a subsection of section 3261.7.

In the 2nd 15-Day Renotice, the acronym DJJ after the spelling of “Division of Juvenile Justice” was removed since the acronym is not used elsewhere within section 3261.2.

Subsection 3261.2(d) is amended. Provided in the 1st 15-Day Renotice, the text “or to the public” was added to clarify and address access to public records.

Subsection 3261.2(e) is amended. Provided in the 1st 15-Day Renotice, changes were made concerning information disclosure and written authorization. To bring the text into compliance with HIPPA, the language “without a valid written authorization” was added to clarify which information may be released without a valid written authorization. In addition, the text “or to the public” was added to clarify and address access to public records.

For additional clarification, the 2nd 15-Day Renotice provides the amended text “without a valid written authorization from the inmate/parolee.” This change was necessary to remove any confusion who the valid written authorization must be from.

Subsections 3261.2(e)(1) through (e)(5) are unchanged.

Subsection 3261.2(e)(6) shows a non-substantive change for correction. It was discovered that a typographical error was present in the original proposed text and 1st 15-Day Renotice text in which the word “Institution” was referenced instead of the correct word “Facility.” In the 2nd 15-Day Renotice, the change was made so that the sentence now correctly reads “Facility assignments and behavior.”

Subsection 3261.2(e)(7) is amended. To clarify the text “general state of health” and bring it into compliance with HIPPA, the 1st 15-Day Renotice provided additional language clarifying how the general state of health for an inmate or parolee may be released without a valid written authorization. When describing the general state of health, text now specifies “general state of health, given in short and non-medical terms such as good, poor, or stable.”

Existing subsection 3261.2(e)(9) is deleted. This change, provided in the 1st 15-Day Renotice, is necessary for HIPPA compliance.

Existing subsection 3261.2(e)(10) is renumbered to 3261.2(e)(9) and is unchanged. This change was provided in the 1st 15-Day Renotice.

Subsection 3261.2(f) is amended. Language specifying “or to the public” is added for clarification to address access to public records. This change was provided in the 1st 15-Day Renotice.

In addition, it was discovered that in the originally proposed and the 1st 15-Day Renotice text, a period after each sentence in subsections (f)(1), (f)(2), (f)(3), (f)(4), (f)(5), and (f)(7) was inadvertently omitted. To correct this, the text in the 2nd 15-Day Renotice now shows a period after each sentence of the referenced subsections.

Subsection 3261.2(g) is unchanged.

Section 3261.2 authority and reference citation is amended to include as a reference authority, Civil Code Section 56.10 which concerns the discloser of medical information. In addition, the Code of Federal Regulations and the Government Code Sections for the California Public Records Act are provided. This change was provided in the 1st 15-Day Renotice. In addition for correction, the 2nd 15-Day Renotice provides a change where the lower case “s” is changed to upper case “S” in the word “Section” before the reference to Penal Code numbers 5058 and 5054. This corrects a typographical error that was presented in the text for the originally proposed regulations and the 1st 15-Day Renotice. Also for correction, the lower case “s” has been changed to upper case “S” in the word “Sections” appearing before the number 56.10 of the Civil Code and is in a strikethrough and underline format. This non-substantive change appears in the final text version.

Section 3261.3 is unchanged.

3261.4. Media Inquiries.

Subsection 3261.4(a) is amended for correction. Previously the regulation stated that “if the requested facts are not known or are otherwise available, the inquirer shall be so informed.” To make the sentence accurate, the word available is now changed to unavailable.

Subsection 3261.4(b) is unchanged.

Section 3261.4 authority and reference citation is changed to correct a typographical error that was presented in the originally proposed and the 1st 15-Day Renotice text. In the 2nd 15-Day Renotice, the lower case “s” has been changed to upper case “S” in the word “Section” before the references to Penal Code numbers 5058 and 5054.

3261.5. Routine Media Interviews.

Existing subsections 3261.5(a) through (g) are relocated and renumbered 3261.5(f) through (l).

New subsection 3261.5(a) provides a change to the originally proposed text. Presented in the 1st 15-Day Renotice, incorrect text is deleted. Reference to news media representative and non-news media representative are used beyond section 3261.5, therefore, the text “the terms below are defined for the purposes of this section” is incorrect and is deleted. The word “definitions” is the appropriate word that is now used.

New subsections 3261.5(a)(1), and (a)(2) are adopted for the purpose of defining “news media representatives” and “non-news media representatives.” This is necessary in order to identify those types of media persons who may be granted access to CDCR facilities and define what function each media representative performs while they are permitted access inside any given departmental facility.

After the 1st 15-Day Renotice, it was determined that the word “individuals” in subsection 3261.5(a)(2) was vague and needed clarification. Presented in the 2nd 15-Day Renotice, the text “in the publishing and broadcasting media” has been added after the word “individuals” to now read “individuals in the publishing and broadcasting media” to now clarify which individuals may be considered non-news media representatives.

New subsection 3261.5(b) is adopted to establish that news media and non-news media representatives be allowed to interview inmates in person, but for the purpose of maintaining the security of departmental facilities and staff, must follow the visiting requirements as provided in Sections 3170 through 3176.3. To clarify and include non-news media representatives, the 1st 15-Day Renotice did provide a change to originally proposed text to specify that “news media and non-news media representative shall be allowed to interview inmates in person....”

New subsection 3261.5(b)(1) is adopted to ensure that no inmate or parolee may have his or her visitation limited or revoked because of a visit from a representative of the news media, nor be punished, reclassified, disciplined, transferred to another prison against his or her wishes or retaliated against. This is necessary for clarification and to protect each inmate from any type of retaliation because of a visit with a news media representative.

In addition, changes to the originally proposed text were made to now specify news media or non-news media representatives. Provided in the 1st 15-Day Renotice, this change which added non-news media representatives, was necessary for clarification and correction.

New subsection 3261.5(b)(2) is adopted to clarify and establish that the news media, while conducting an interview pursuant to the visiting requirements as referenced in subsection 3261.5(b), shall be allowed to bring into the facility, up to three (3) pens, three (3) pencils and one (1) pad of paper and that these items shall be searched to protect against an immediate and direct threat to the security of the institution. This is necessary to ensure that within reason, news media representatives will have access to the most basic tools of their trade that will allow an accurate record of the interview, but at the same time, ensure that these writing tools will pose no threat to the security of the facility, staff, inmates, and/or the public in general. In addition, because these interviews are done in a visiting room setting and in order to protect the personal privacy of other inmates and their family members, as well as preserve a respectful visiting environment, it is necessary for the Department to not allow audio and video equipment.

An additional change was provided in the 1st 15-Day Renotice. For clarification and correction, the text “and non-news media” was added so that it was clear that both news media and non-news media representatives are allowed to bring in the 3 pens, 3 pencils and one pad of paper.

New subsection 3261.5(c) is adopted for clarification and to specify that inmates shall be allowed telephone calls to the media in accordance with the regulations provided in Section 3282, Use of Telephones by Inmates, and that the phone call may be recorded by the media representative with the inmate’s consent.

In the 1st 15-Day Renotice for correction and consistency, the text “media” and “and non-news media” was added to now specify “news media and non-news media representatives.”

New subsection 3261.5(d) is adopted. In the originally proposed text, language specified that access by media representatives to Department institutions, contract facilities and equipment require the prior approval of the institution head or the Assistant Secretary of Communications or their designee. This was necessary in order to remove any confusion concerning what approvals are required for media access.

In the 1st 15-Day Renotice, changes for clarification and consistency were made to now specify news media and non-news media representatives.

After the 1st 15-Day Renotice, additional changes were made to the text concerning the required approvals for institution access for news media and non-news media representatives. It was determined that subsection 3261.5(d) was in part duplicative of, and in possible conflict with subsection 3261.1(a). To correct this, the text “of the institution head or the Assistant Secretary of Communications or their designee” was deleted from this subsection, and the text “pursuant to the provisions in subsection 3261.1(a)” was added so that the text would now just reference to subsection 3261.1(a) which provides the required approvals for both news media and non-news media representative access. This change was presented in the 2nd 15-Day Renotice.

New subsection 3261.5(d)(1) is adopted. The originally proposed text specifies and requires non-news media representatives to provide proof of employment by a bona fide publication or production company, or have convincing evidence that such a company has contracted to purchase the completed project prior to approval. This change is necessary for the purpose of security and to ensure that departmental costs and resources will be invested in and used efficiently for those projects that will help to further public understanding of CDCR operations and policies.

New subsection 3261.5(d)(2) is adopted. Originally proposed text provides that non-news media requests for access to departmental facilities, on-duty staff or inmates shall include project and production details as necessary to determine security and operational impacts and shall be approved by the Assistant Secretary of Communications or their designee. This amendment was necessary for the safety of the institution, staff and inmates. In addition, this will ensure that departmental resources are used efficiently to help prevent any undue burdens on facility operations.

Additional changes to the originally proposed text were also made. It was determined that some of the text within this subsection was in duplication of, and possibly in conflict, with subsection 3261.1(a), primarily concerning the required approvals for non-news media access. To correct this, text referencing approvals was deleted from this subsection, specifically the text “and shall be approved by the Assistant Secretary of Communications or their designee.” Also for clarity and text consistency, the word “representative” was added after “non-news media” so that it now reads, “non-news media representative.” These changes were presented in the 2nd 15-Day Renotice.

New subsection 3261.5(d)(3) is adopted to provide in these regulations, the California Film Commission requirements that must be met before any production company can film on any State of California owned property.

It was also later determined that the wording “non-news productions” required additional clarification. The text “media representative film” was added so that the sentence now reads “non-news media representative film productions requires a California Film Commission permit...” This change is consistent with other text in these regulations referencing non-news media representatives in addition to also clarifying that this is for film productions. These later changes were presented in the 2nd 15-Day Renotice.

New subsection 3261.5(e) is adopted. Originally proposed texts provided that media representatives may be allowed access to security housing units and administrative segregation with the prior approval of the institution head. This amendment was specific on media representative access and removed any confusion concerning what approvals were required.

In the 1st 15-Day Renotice, text changes were made for correction and consistency to specify news media and non-news media representatives.

New subsection 3261.5(e)(1) is adopted. In the original proposed text, language establishes that access to any secured area where lethal weapons are maintained requires the prior approval of the head of the Adult or Juvenile facility. This amendment was necessary for clarification and to remove any confusion on what approvals are required in order to access these secured areas.

After the 1st 15-Day Renotice, it was determined that additional changes to the text were needed. For clarity and text consistency, the text “of the Adult or Juvenile facility” was deleted and the text “institution” added so the sentence now reads “access to any secured area where lethal weapons are maintained requires the prior approval of the institution head.” Presented in the 2nd 15-Day Renotice, this text change to “institution head” stays within the scope of the regulations and is consistent with other text.

New subsection 3261.5(e)(2) was originally adopted to specify that media representatives performing approved functions shall be under the direct supervision of the facility’s Public Information Officer or designee as determined by the institution head. The purpose was to establish the supervision authority that each media representative must follow. In addition, changes to the originally proposed text were made to specify news media and non-news media representative. This change for clarification was presented in the 1st 15-Day Renotice.

Originally proposed new subsection 3261.5(e)(2) is deleted. It was later determined that new adopted subsection 3261.5(e)(2) was in duplication of and in conflict with subsection 3261.1(b) of these regulations. To correct this, the decision was made to delete new subsection 3261.5(e)(2), and that the appropriate text from this subsection would be incorporated into subsection 3261.1(b), which now provides that “within a facility, except as required by subsection 3261.5(b), news media and non-news media representatives shall be under the direct supervision of the facility’s or regional Public Information Officer or their designee as determined by the institution head.” This change was provided in the 2nd 15-Day Renotice.

New subsection 3261.5(e)(3), later renumbered to subsection 3261.5(e)(2), is adopted to allow each institution head the option, if they choose, of allowing news media representatives access to an area outside the secure perimeter of a facility. Because of the deletion to the originally adopted subsection 3261.5(e)(2), the numbering for subsection 3261.5(e)(3) has been changed to 3261.5(e)(2). This change appears in the 2nd 15-Day Renotice.

Existing subsections 3261.5(a), (a)(1), and (a)(2) are renumbered to (f), (f)(1), and (f)(2) respectively with (f)(1) unchanged.

New subsection 3261.5(f) is amended. Changes to the originally proposed text were made to specify news media and non-news media representative. This change for clarification was presented in the 1st 15-Day Renotice. It should be noted that after the 2nd 15-Day Renotice was sent out, it was discovered that the letter “s” was inadvertently left off the word “news” in the reference “non-news media representative.” This simply omission which is non-substantive has been corrected and appears in the final text.

New subsection 3261.5(f)(2) is amended. It was determined that additional clarification was needed concerning specific person face-to-face interviews. For correction purposes and to remove any conflict with subsection 3261.5(b), the text “except as provided in subsection 3261.5(b)” is added. Subsection 3261.5(b) allows news media and non-news media representatives to interview inmates in person in accordance with the visiting requirements of sections 3170 through 3176.3. These changes were presented in the 2nd 15-Day Renotice.

Existing subsection 3261.5(b) is renumbered to 3261.5(g) and is amended for additional clarification by specifying that photographs, films or video recording of inmates shall be allowed in accordance with Section 3261.7.

Existing subsections 3261.5(c) and (d) are renumbered to (h) and (i) respectively with (i) unchanged.

New subsection 3261.5(h) is amended. Changes to the originally proposed text were made to specify news media and non-news media representatives. This change for clarification and text consistency was presented in the 1st 15-Day Renotice.

Existing subsection 3261.5(e) is renumbered to (j) and is amended for correction. In the originally proposed text, the revision date of 7/91 had been changed to 3/92, which at that time was the most current version for the referenced CDC Form 146. It was subsequently determined that the 3/92 version of the form should have been part of the original regulations and made available for review to the public. It was also determined that the 3/92 version of the form no longer was consistent with the revised regulations and needed to be revised.

The form has been revised and is now referenced as CDCR Form (Rev. 06/08), Inmate Declaration To News Media Contact, which is incorporated by reference into the regulations. The revised CDCR Form 146 (Rev. 06/08) along with the original CDC Form 146 (Rev. 7/91) were made part of and included in the 2nd 15-Day Renotice for review and comparison. In addition, both versions of the forms were posted to the CDCR internet and intranet websites.

Changes to the regulatory text, for clarification, include the addition of the language “an interview” and “photograph” so that the text in part now reads when referencing the use of the CDCR Form 146, “shall be completed whenever an inmate is the subject of an interview, still photograph, motion picture or other recording”

Existing subsection 3261.5(f) is renumbered to (k) and is amended. For correction, the letter “R” has been added to the acronym CDC so that the text now correctly references the CDCR Form 146. This change was presented in the 2nd 15-Day Renotice.

Existing subsection 3261.5(g) is renumbered to (l) and is amended for clarity by changing the words “video taped” to now read “video recorded.”

Section 3261.5 authority and reference citation is changed to correct a typographical error that was presented in the originally proposed and in the 1st 15-Day Renotice text. In the 2nd 15-Day Renotice, the lower case “s” has been changed to upper case “S” in the word “Section” appearing before the number 5058.

Section 3261.6 is unchanged.

3261.7. Cameras and Other Audio or Visual Recording Devices.

Subsections 3261.7(a), (b), (c), and (c)(1) are amended to include non-substantive grammatical changes for correction.

An additional change appears in subsection (c)(1). Due to the revision of the CDC Form 146, for correction, the acronym “CDC” has been changed to “CDCR”. This change appears in the 2nd 15-Day Renotice.

Subsection 3261.7(c)(2) is unchanged.

Subsection 3261.7(c)(3) is amended for correction by including a non-substantive grammatical change. In addition, in the originally proposed text, the reference to the abolished California Youth Authority had been deleted and replaced with the acronym DJJ which represents the current Division of Juvenile Justice.

It was later determined that since this is a new section with a reference to the Division of Juvenile Justice, the acronym DJJ should actually be spelled out. Since there is no other references to the Division of Juvenile Justice in this section, the acronym DJJ has been deleted and the text “Division of Juvenile Justice” replacing the DJJ acronym. This change was presented in the 2nd 15-Day Renotice.

Subsection 3261.7(d) is amended. Changes to the originally proposed text, for clarification, were made to specify news media and non-news media representative and was provided in the 1st 15-Day Renotice.

After the 1st 15-Day Renotice, an additional change was made. It was determined that since this is a new section, reference to the definition of news media and non-news media representatives was needed for clarification. In the 2nd 15-Day Renotice, text has been amended by specifying “news media

representatives as defined in subsection 3261.5(a)(1) and non-news media representatives as defined in subsection 3261.5(a)(2), shall be permitted access to identification photographs without the inmate's or parolee's consent." In addition, after the 2nd 15-Day Renotice was sent out, it was discovered that the word "subsections" should have instead been referenced "subsection" in the text "and non-news media representatives as defined in subsection 3261.5(a)(2)." This typographical error has been changed with the correct word "subsection" now appearing in the final text.

Subsection 3261.7(d)(1) is amended. Changes to the originally proposed text, for clarification and text consistency were made to specify news media and non-news media representative and was provided in the 1st 15-Day Renotice. In addition, the 2nd 15-Day Renotice provides clarification to the word "photograph" by relocating and adding text to now read "departmental identification photograph."

Subsection 3261.7(d)(2) is amended. The 2nd 15-Day Renotice provides clarification to the word "photograph" by adding text to now read "departmental identification photograph."

Subsection 3261.7(e) though (f)(1) are unchanged.

Subsection 3261.7(f)(2) is amended for correction by including non-substantive grammatical changes.

Subsection 3261.7(g) is unchanged.

Subsection 3261.7(h) is amended. Changes to the originally proposed text were made to specify news media and non-news media representative. This change for clarification was provided in the 1st 15-Day Renotice.

Section 3261.7 authority and reference citation is changed to correct a typographical error that was presented in the originally proposed text and in the 1st 15-Day Renotice. In the 2nd 15-Day Renotice, the lower case "s" has been changed to upper case "S" in the word "Section" appearing before the number 5058.

Sections 3262 through 3266 are unchanged.

3267. Access of Public Officials to Facilities.

Subsections 3267(a) through (a)(3) are unchanged.

Subsection 3267(b) is amended for correction by deleting the text "director's" and replacing it with "Secretary's". This change was necessary in order to reflect the current CDCR authority structure. It was later determined that since this is a new section, reference to Secretary needs to be spelled out for clarification. Presented in the 2nd 15-Day Renotice, new text now provides "Secretary of the California Department of Corrections and Rehabilitation."

New subsection 3267(c) is adopted. In the originally proposed text, new language allows the Secretary, in cases of immediate need and upon written notification, the discretion to suspend any explicit prohibition regarding access to inmates, and allow access to dignitaries and their guests or staff in the interest of public understanding of departmental operations and responsibilities.

It was later determined that the word "dignitaries" was too vague. New text presented in the 2nd 15-Day Renotice replaces the word "dignitaries" with "public officials," which is the more appropriate reference and the reference that is currently used within section 3267.

Section 3267 authority and reference citation is changed to correct a typographical error that was presented in the originally proposed text and the 1st 15-Day Renotice. In the 2nd 15-Day Renotice, the lower case "s" has been changed to upper case "S" in the word "Section" appearing before the numbers to 5058 and 5054.

DETERMINATION

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. The Department has made an initial determination that the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

PUBLIC HEARING COMMENTS

Public Hearing: Held September 25, 2007, at 9:00 a.m.

SPEAKER #1:

Comment 1A: Commenter provides a personal introduction and states that she represents Crime Victims United of California (CVUC). Commenter contends that they have grave concerns with the proposed regulations. For years, CVUC has advocated against allowing media access to prisoners because elevating criminals to celebrity status, glamorizes crime and gives prisoners the chance to, once again, victimize their victims and their families. In addition, the victims sides are never given equal time. Since 1998, CVUC has actively lobbied against media access proposals that did not take victim impacts into account.

Accommodation: None.

Response 1A: Because the above comment does not provide any specific recommendations and/or address any specific part of the proposed text, but instead provides broad generalizations against the regulations as a whole, the Department is unable to develop a specific response in refutation of or accommodation to the comment. The Department can respond in general by saying that it has great compassion and understanding for each person who is an unfortunate victim of a crime, and does recognize that some crimes and the individuals associated with those crimes do attract media attention. Unfortunately, this may have some negative effect for some crime victims and their families, but it should be understood that much of media publicity for certain crimes and offenders comes long before an offender is ever committed to the jurisdiction of the Department.

The Department determined that its regulations concerning media access to California Department of Corrections and Rehabilitation (CDCR) facilities, inmates and staff, required updating. This was necessary in order to reflect the current CDCR, and more importantly for the purpose of safety and security. Contrary to the Commenter's statement, these regulations do not elevate offenders or glorify their crimes. These regulations do not provide any additional public access that isn't already allowed in existing regulations, but instead, provides clarification by defining the types of media representatives (news media and non-news media representatives), the process that both news media and non-news media

representatives must follow in order to have access to facilities and inmates, and clarifying what approvals are required prior to any visitation.

Comment 1B: Commenter states that CVUC has worked within the legislative process on various media access proposals over the years and the CVUC understands that media access is not going to go away and in 2004, offered a set of victim friendly amendments and measures which were not taken into consideration but fortunately the measure was vetoed by the Governor. Commenter provides that the dialog on the issue continued the following year with additional proposals being introduced. The CVUC has never been supportive of media access in any form, but the opportunity to ensure that victims were notified and considered during the media access process, the CVUC remained neutral concerning a measure going forward by Senator Romero which included victim notification. Commenter states that the Governor again vetoed this year's media access measure, SB 304, citing yet again concerns about glamorizing criminals and the need to consider and balance victim impacts. Commenter feels that these regulations do not respect or balance the concerns of victims and completely ignore the compromise CVUC achieved in the legislature in working with Senator Romero whereby victims would have the opportunity to be notified should a request be granted to interview their offender or their offender happened to be interviewed at any step in the process. Because of this, the CVUC urges that the proposed regulations be rejected unless revised to address the adverse affects on victims and their families.

Accommodation: None.

Response 1B: See Response 1A. In addition, it is the Department's position that there is no need for victim notification. A key part of these regulations is that approved news media and non-news representatives are given general access to institutions/facilities and can interview anyone they come across at random. The interview can be about any program, policy or issue.

What the news media and non-news media representative cannot do is specifically request an interview with a specific inmate. Since there is no premeditated plan for the reporter to talk to a specific inmate, and the media representative has no idea who they will encounter until the random interview takes place, there is no victim to notify in advance. These random interviews are generally about issues concerning overcrowding, health care, institution conditions, etc., and are not set up for the inmate to talk in detail about their crime.

If a news media or a non-news media representative does create a relationship with a specific inmate and wants to speak with that inmate in person, they have access to that specific inmate as a visitor and must follow the same procedures as any other visitor pursuant to the visiting regulations. To be a visitor, an inmate must place that person (news media or non-news media representative) on their approved visiting list. If a media representative, who is an approved visitor, does show up at an institution to visit a specific inmate, the Department has no way of obtaining any prior knowledge of the visit, the nature or topic of any discussion that might take place during the visit, or even if a victim might be affected by the subject matter discussed. If an inmate has not broken any rules and is entitled to the visit the inmate has the right to speak to any approved visitor about any subject. Even if it were possible to provide victim notification, the Department is currently unaware of any authority that would allow the victim, at their discretion, to cancel an inmate's visit if in fact, that is the intent. It is not clear to the Department what is the exact reason for, or a consequence that would result from, a specific victim notification when permission for general access has been granted.

SPEAKER #2

Comment 2A: Commenter states he is a staff member in the office of Senator Gloria Romero and provides that the Senator believes that the proposed regulations do not allow enough access of the media to inmates. Specifically, that the regulations should allow for specific face to face interviews and not require reporters and other people from the media to utilize the visitation process as this often causes unnecessary delay in obtaining interviews. Because of the delay, the news-worthiness has expired and a

decay of memory in evidence. In addition, the commenter states that the Senator believes that there should be a greater allowance for the use of tools of the trade beyond just pens, paper and pads, to include source documents which allow inmate storage to be corroborated and details to be teased up. The Senator also believes that there should be broader use of recording devices, both auditory and visual.

Accommodation: None.

Response 2A: The Department stands by its regulations. Many of the media requests that the Department receives are from tabloid media who only want to talk with the most notorious of inmates. By only allowing random interviews for the media who are permitted general access to an institution/facility, this in part helps to reduce the glamorization of those higher profile inmates and their crimes. News media and non-news media representatives do have access to a specific inmate and shall be allowed to interview those inmates in person but only as specified in Subsection 3261.5(b), it must be done in accordance with the visiting requirements of Sections 3170 through 3176.3. For the purpose of safety and security, certain rules and processing requirements concerning visitation must be followed, but it should be understood that the Department does make every reasonable attempt to process each inmate's visitor approval request in an efficient and timely manner to help reduce the time when a visiting request is submitted and the time the actual visit takes place.

In addition, it is unclear to the Department what the Commenter means by news-worthiness and a decay of memory in evidence. It should be assumed that prior to an offender coming into the jurisdiction of the Department, relevant evidence concerning an offender and their crime has already been presented and examined in a court of law. Additionally, the Department is responsible for the safe, secure, and smooth operation of each institution/facility and should not be diverted if one specific inmate is deemed news-worthy enough for a media story or report.

Concerning tools of the trade, the Department stands by its regulations only allowing the specified pens, paper and pads in a visiting room setting. Allowing these items is an improvement for media news representatives, and as stated in the Initial Statement of Reasons, "This is necessary to ensure that within reason, news media representatives will have access to the most basic tools of their trade that will allow an accurate record of the interview, but at the same time, ensure that these writing tools will pose no threat to the security of the facility, staff, inmates, and/or the public in general." In addition, because these interviews are done in a visiting room setting and in order to protect the personal privacy of other inmates and their family members as well as preserve a respectful visiting environment, it is necessary for the Department to not allow audio and video equipment."

Comment 2B: Commenter states that a further concern is the lack of notification requirement for victims and victims' families which can cause great distress. Because of the delay that may ensue if there isn't a notification requirement put in place without shortening the time frame between when a request is made and permission is granted, it will provide greater hardship to victims and victims' families because the delay from approval to interview to publication may be many months, and speeding this process up will help both news organizations and victims and their families.

Accommodation: None.

Response 2B: See Speaker #1, Response 1B.

Comment 2C: Commenter states that the Senator has concerns about the definition of "non-news media representative." She feels this could be somewhat confusing and could have a dampening effect on the provision of information to the public. Commenter further provides that the Senator believes that it is essential at this time of federal scrutiny and great public concern that the public has the provision of timely information provided by news media on conditions within the prisons so the public can better understand the problems faced by the Department and the State and to try to work through these issues.

Accommodation: None.

Response 2C: The Department contends that the definition of “non-news media representative” is clear. It should be noted that additional clarification was provided in the 2nd 15-Day Renotice adding the text to specify that non-news media representatives means individuals “in the publishing and broadcasting media....” In general, the commenter’s statement is vague with no specifics and there has been no evidence presented to the Department to substantiate the general assertion that the definition is confusing and could have a dampening effect on the provision of information to the public. The Department’s position is that to better serve public information and for the purpose of security, it is important to insure that only members of the media with a bona-fide reason and purpose for obtaining and providing public information are allowed media access.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS

COMMENTER #1:

Comment 1A: Commenter suggests that subsection 3261.2(b) be revised to include all health care related information, not just AIDS information. Reason provided is that no personal or confidential health information will be disclosed per the federal Health Insurance Portability and Accountability Act (HIPPA) law.

Accommodation: Revised subsection 3261.2(b).

Response 1A: The Department in reviewing the suggestion from Commenter #1, revised subsection 3261.2(b) to incorporate needed changes for the purpose of being in compliance with HIPPA. These changes were presented in the 1st 15-Day Renotice.

COMMENTER #2:

Comment 2A: Commenter references subsection 3261.1(a) with specific attention to the text “Media representative access to a department facility or contract facility require the approval of the institution head or the Assistant Secretary of Communications or designee.” Commenter states that the word “or” indicates that the Assistant Secretary of Communications or designee may approve media access to an institution with or without the institution heads approval. Commenter then provides that if the Assistant Secretary of Communications or designee grants access to an institution without the institution head’s approval, the Assistant Secretary of Communications or designee should then be providing all coverage for such an escort.

Accommodation: Amendment to subsection 3261.1(a) providing further clarification on approval requirements for news-media and non-news media representatives.

Response 2A. The original intent and purpose of this change was to clarify that either the Assistant Secretary for Communications or other designated persons on his or her staff could provide the approval for a news media representative to go inside the prison. Because the original language was somewhat confusing regarding just media representatives in general, two 15-Day Renotices have provided additional clarification to now clarify the access approval requirements for both news media and non-news media representatives.

There was never the intent and these changes do not preclude the warden from being involved with the decision, especially during times of security concerns. The Office of Public and Employee

Communications represents the entire department from the Office of the Secretary and is the primary contact for media on policy issues. In addition, news media and non-news media representative access to the institutions is coordinated with the warden's office through the Administrative Assistant/Public Information Officer, who reports to the warden. Also, there are times when local media can only gain access to an institution by approval of the warden without the involvement of the Office of Public and Employee Communications.

It should also be noted that media access to some parts of the institution, such as security housing, administrative segregation and places where firearms are kept, require the approval of the institution head regardless of who authorized the media access to the institution.

Comment 2B: Commenter references subsection 3261.5(d)(2) which states "Non-news media requests for access to department facilities, on-duty staff or inmates shall include project and production details as necessary to determine security and operational impacts and shall be approved by the Assistant Secretary of Communications or designee." Commenter states that this subsection is unclear and asks what the text is trying to say?

Accommodation: Clarification of Subsection 3261.5(d)(2) on 2nd 15-Day Renotice.

Response 2B: Because the Commenter only provided a generalized reference and question to the subsection as a whole, the Department cannot formulate a more specific response to explain any portion of the text or any specific word that may have caused confusion to the Commenter. The Department can respond by saying that Subsection 3261.5(d)(2) was amended on the 2nd 15-Day Renotice. It was determined that some of the text within this subsection was in duplication of, and possibly in conflict with, subsection 3261.1(a) primarily concerning the required approvals for non-news media access. To correct this, the text referencing approvals was deleted from this subsection, specifically "and shall be approved by the Assistant Secretary of Communications or their designee." Also for clarity and text consistency, the word "representative" was added after "non-news media" so that it now reads, "non-news media representative."

Concerning project and production details, this information is necessary in order to determine the security and operational impacts that may be required for the visit.

Comment 2C: Commenter references renumbered subsection 3261.5(f)(2) which states "Inmates may not participate in specific face-to-face interviews." Commenter states that this subsection contradicts renumbered subsection 3261.5(b), which states "News media representatives shall be allowed to interview inmates in person in accordance with the visiting requirements of sections 3170 through 3176.3."

Accommodation: Amendment to Subsection 3261.5(f)(2) in 2nd 15-Day Renotice.

Response 2C: The above referenced subsections concern two separate issues and are not related. Subsection 3261.5(b) allows news media and non-news media representatives to interview specific inmates in person, as a visitor who has followed the guidelines pursuant to Sections 3170 through 3176.3. Subsections 3261.5(f), (f)(1), and (f)(2) outline what is permitted when a news media or non-news media representative is allowed general access to a departmental facility, specifically, only allowing random face-to-face interviews with inmates. Subsection 3261.5(f)(2) only clarifies that inmates may not participate in specific person face-to-face interviews on a media general access visit to an institution. This is not related to what is permitted for an inmate visit. In order to remove any possible conflict though, the Department did provide additional clarification to subsection 3261.5(f)(2) by adding the text "except as provided in subsection 3261.5(b)" which appeared in the 2nd 15-Day Renotice.

COMMENTS #3:

Comment 3A: Commenter references subsection 3261.5(b)(2) and states that “Non-news media representatives” should also be permitted to bring supplies as stipulated in subsection 3265.1(a)(2).

Accommodation: Subsection 3261.5(b)(2) was revised to include non-news media.

Response 3A: The Department has revised subsection 3261.5(b)(2) to include non-news media. These changes were provided in the 1st 15-Day Renotice.

Comment 3B: Commenter states that free-lance writers sometimes have to complete the article before they shop it to a publisher and contends that this is an undue burden on a free-lance writer to make him/her “provide proof of employment.” Also, the contracted to purchase requirement appears to invade privacy (see California Constitution, Art. 1, Sec. 1).

Accommodation: None.

Response 3B: The Department contends that most freelance journalists have some contracted arrangement with publishers prior to researching a story. Those who make their living as a free-lance journalist rarely invest the time and expense of completing a story without some understanding that it will be published, whether it is a letter of intent from an editor or an explicit contract. The requirement is no more onerous than the requirement that film production companies provide some proof of a contracted arrangement with a broadcast partner prior to being approved for access to the institutions. It is an inefficient use of public resources to accommodate freelancers who have no prospect of publishing or broadcasting a final product and who work exclusively on speculative projects. In addition, the Department contends that in no way is there any evidence that these regulations invade privacy and it is unclear to the Department how the commenter associates the two. These are institutions of high security for the protection of the public, and all persons who pass through its gates must comply with all security requirements.

COMMENTS #4:

Comment 4A: Commenter states she is writing to express her opposition and concern regarding the regulations. Commenter provides that for years, victims have advocated against allowing media access to prisoners because elevating a criminal to “celebrity” status and gives prisoners a chance to once again victimize their victims and victims’ families. Commenter contends that giving “celebrity” status, victims have opposed providing additional media access to prisoners because the reporting is not balanced and victim sides are never given equal time.

Accommodation: None.

Response 4A: See Speaker #1, Response 1A and Response 1B.

Comment 4B: Commenter states the regulations do not take into account victim impacts or provide for balanced reporting and equal time for victims and completely ignore the compromise achieved in the Legislature whereby victims would have the opportunity to be notified should a request be granted to interview their offender. This would help victims prepare themselves to see, read, or hear their offender in the media.

Accommodation: None.

Response 4B: See Speaker #1, Response 1B.

COMMENTER #5:

Comment 5A: Commenter states that the California Broadcasters Association (CBA) is composed of the 982 radio and television stations in this state, and that the members have passionate objections to the current rules which prohibit media access to specific prisoners and obstruct the public's right to know how their tax dollars are being spent. Commenter provides that the CBA recognizes the need for guidelines to ensure the safe and smooth operation of the prisons, they do oppose restricting media representatives for use of the 3 pens, 3 pencils and one pad of paper in a scheduled interview. They support this expansion for the print media, but contend that it still won't allow journalists to bring in source material for comment and the total ban of the "tools of the trade" such as cameras and recording devices is unwarranted. Commenter contends that imposing rules that discriminate so blatantly against the electronic media leaves the disturbing impression that the Department's real goal is to regulate content by limiting equipment access.

Accommodation: None.

Response 5A: Concerning tools of the trade, the Department stands by its regulations only allowing the specified pens, paper and pads in a visiting room setting. Allowing these new items is an improvement for news media representatives, and as stated in the Initial Statement of Reasons, "This is necessary to ensure that within reason, news media representatives will have access to the most basic tools of their trade that will allow an accurate record of the interview, but at the same time, ensure that these writing tools will pose no threat to the security of the facility, staff, inmates, and/or the public in general." In addition, because these interviews are done in a visiting room setting and in order to protect the personal privacy of other inmates and their family members, as well as preserve a respectful visiting environment, it is necessary for the Department to not allow audio and video equipment."

Comment 5B: Commenter states that news quality is often dependent upon the privacy between reporters and their sources, and that reporters have become prisoners themselves because of the necessity to retain that trust. Random interviews on the prison grounds in front of correctional officers are hardly conducive to the fact-finding process, and neither is conducting an interview during normal visiting hours. Both severely reduce a journalist's ability to inform the public.

Accommodation: None.

Response 5B: The portion of the comment which in part states "that news quality is often dependent upon the privacy between reporters and their sources and that reporters have become prisoners themselves because of the necessity to retain that trust," is generalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. Concerning the part of the comment regarding random interviews in front of correctional officers, it is necessary for the security and safety of not only the institution/facility that the media be accompanied when permitted access, but also necessary for the safety of the media representative(s). For any security institution/facility, all rules, including visiting hours, must be adhered to in order to insure its safe and smooth operation.

Comment 5C: Commenter states that victims of crime deserve our sensitivity, respect and compassion and the regulations appear to be arguing that a story in a newspaper has less opportunity to "revictimize" than a news story. Commenter contends that if warning a victim is the concern, there are ways television

and radio can voluntarily accommodate this goal. Examples include excluding pictures and/or the voice of the inmate – effectively warning the victim not to watch the news programming on that station at that particular time. Commenter then contends that taxpayers have every right to expect the system to be open to radio and television scrutiny at all levels and urges the Department to expand the list of media tools allowed during scheduled inmate interview and to permit those interviews to be confidential at a time outside normal visiting hours.

Accommodation: None.

Response 5C: The part of the comment stating that “the regulations appear to be arguing that a story in a newspaper has less opportunity to “re-victimize” than a news story”, is generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. Concerning victim notification, **see Speaker #1, Response 1B.** Concerning the request to expand the list of media tools, **see Commenter #5, Response 1A.** Concerning allowing interviews beyond normal visiting hours, the response is as provided in Commenter #5, Response 5B, that “For any security institution/facility, all rules, including visiting hours, must be adhered to in order to insure its safe and smooth operation.” The CDCR budget does not fund extra visiting for media.

COMMENTER #6:

Comment 6A: Commenter states she is submitting comments on behalf of Crime Victims United of California (CVUC). Commenter contends that they have grave concerns with the proposed regulations. For years, CVUC has advocated against allowing media access to prisoners because elevating criminals to celebrity status, glamorizes crime and gives prisoners the chance to, once again, victimize their victims and their families. In addition, the reporting is not balanced and victims sides are never given equal time. Since 1998, CVUC has actively lobbied against media access proposals that did not take victim impacts into account.

Accommodation: None.

Response 6A: See Speaker #1, Responses 1A and 1B.

Comment 6B: Commenter states that in 2004 with increasing concerns in the State over prison conditions and abuses within the prison system, CVUC understood that media access is not going to go away. Commenter states that CVUC believed it needed to come up with some victim friendly amendments to the measures in the 2004 media access bill. After expressing intense opposition to the 2004 media access bill, CVUC was invited to participate in a meeting with the sponsors of the bill and the American Civil Liberties Union (ACLU). Despite CVUC’s involvement, the amendments offered by CVUC were not accepted.

In 2005, the CVUC took a neutral position on a bill sponsored by Republican Assemblyman Ray Haynes which took into account victim notification during the media access process. At the same time, Senator Gloria Romero had a competing media access measure which subsequently was amended to include notification and in an act of good faith, has retained the provision in her measure each year since. CVUC has not and will not support media access; rather, the CVUC has remained neutral on the media access bills that have maintained the agreement that includes victim notification. Commenter feels that these regulations do not respect or balance the concerns of victims. Because of this, the CVUC urges that the proposed regulations be rejected unless revised to address the adverse affects on victims and their families.

Accommodation: None.

Response 6B: See Speaker #1, Responses 1A and 1B.

COMMENTER #7:

Comment 7A: Identical to the comments provided by Commenter #4, Commenter states she is writing to express her opposition and concern regarding the regulations. Commenter provides that for years, victims have advocated against allowing media access to prisoners because elevating a criminal to “celebrity” status gives prisoners a chance to once again victimize their victims and victims’ families. Commenter contends that by giving “celebrity” status, victims have opposed providing additional media access to prisoners because the reporting is not balanced and victim sides are never given equal time.

Accommodation: None.

Response 7A: See Speaker #1, Responses 1A and 1B.

Comment 7B: Commenter states the regulations do not take into account victim impacts or provide for balanced reporting and equal time for victims, and completely ignore the compromise achieved in the Legislature whereby victims would have the opportunity to be notified should a request be granted to interview their offender. This would help victims prepare themselves to see, read, or hear their offender in the media.

Accommodation: None.

Response 7B: See Speaker #1, Response 1B.

COMMENTER #8:

Comment 8A: Commenter provides general background information and states that the comments are submitted on behalf of the California Newspaper Publishers Association (CNPA). Commenter provides that the CNPA has co-sponsored eight bills to overturn the existing regulations and restore the ability of journalists to conduct prearranged interviews of inmates and has also been strident in its efforts to change current law, which permits journalists to access inmates only through the visitation process, because the regulations operate to deprive journalists and the public of the ability to obtain important information from these facilities in a timely manner.

Commenter states that the process that a journalist must go through to gain access to an inmate via visitation is lengthy and time-consuming, a process that can take up to six months. Commenter further contends that the proposed changes perpetuate the problem of delayed access to interviewing inmates and while the changes do provide for a quick administrative response to media requests, it does nothing to resolve the delay between the time the request is granted and when the interview finally takes place.

Accommodation: None.

Response 8A: Concerning the general background information, the comment is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Concerning inmate visitation, the Department stands by its regulations which does provide that news media and non-news media representatives do have access to a specific inmate and shall be allowed to interview those inmates in person, but as specified in Subsection 3261.5(b), it must be done in accordance with the visiting requirements of Sections 3170 through 3176.3. For the purpose of safety and security, certain rules and processing requirements concerning visitation must be followed, but it should be understood that the Department does make every reasonable attempt to process each inmate's visitor approval request in an efficient and timely manner to help reduce the time when a visiting request is submitted and the actual visit takes place.

The commenter has made broad generalizations that arranging visitation is lengthy and time consuming, and a process that can take up to six months. In response, the Department contends that it cannot influence an inmate to talk with media representatives. The inmate has the right to choose whether or not to approve a media representative as a visitor and is not compelled by any time limits to respond to such a request. It is the inmate, not the Department, who influences whether or not a visiting relationship is established or how long it takes. No visiting relationship can be reviewed by the Department for approval unless the inmate agrees and initiates the process. There is no time limit imposed on an inmate to respond to a request for a visiting relationship and as stated before, the inmate is free to completely ignore a media representative's request to establish a visiting relationship and if they did, there would be no visitor application to review or approve. The Department makes every effort to process each inmate's visitor approvals in a timely manner, but only after the decision to submit it is made by the inmate, not the news media or non-news media representative.

Comment 8B: Commenter references subsection 3261.1(a) which says, "For each media request, the institution head or the Office of Public and Employee Communication will provide an initial response back within two (2) working days." Commenter states that while the journalist making the request would know within two days whether his/her request to interview an inmate has been granted, because they are only permitted to interview the inmate as a visitor (subsection 3261.5(b)), they nonetheless still wait for several additional months to learn whether he/she has been approved by the Department as a visitor. These regulations fail to provide an expedited approval process for journalists who are required to conduct the interview as a visitor.

Accommodation: None.

Response 8B: The Commenter's statement is only partially correct. An initial response back within two (2) working days relates to a news media or non-news media representative's request for access to a facility and would apply to random inmate interviews only. The Commenter's reference to only being permitted to interview the inmate as a visitor, only applies to a news media or non-news media representative who wants a personal face-to-face interview with a specific inmate and must be done pursuant to the visiting regulations as specified in subsection 3261.5(b).

As provided in Commenter 8, Response 8A, the Department stands by its regulations which provides that news media and non-news media representatives do have access to a specific inmate and shall be allowed to interview those inmates in person, but as specified in subsection 3261.5(b), it must be done in accordance with the visiting requirements of sections 3170 through 3176.3. For the purpose of safety and security, certain rules and processing requirements concerning visitation must be followed, but it should be understood that the Department does make every reasonable attempt to process each inmate's visitor approval request in an efficient and timely manner to help reduce the time when a visiting request is submitted and the actual visit takes place.

Comment 8C: Commenter states that in keeping with the spirit to provide a timely response to a media request for an interview with an inmate in subsection 3261.1(a), CNPA urges the Department to amend the proposed regulations to adopt the process set forth in SB 304 by Senator Gloria Romero to allow specific face-to-face interviews.

Accommodation: None.

Response 8C: As taken from Speaker #2, Response 2A, many of the media requests that the Department receives are from tabloid media who only want to talk with the most notorious of inmates. By only allowing random interviews for the media who are permitted general access to an institution/facility, this in part helps to reduce the glamorization of those higher profile inmates and their crimes. News media and non-news media representatives do have access to a specific inmate and shall be allowed to interview those inmates in person, but as specified in Subsection 3261.5(b), it must be done in accordance with the visiting requirements of Sections 3170 through 3176.3. For the purpose of safety and security, certain rules and processing requirements concerning visitation must be followed, but it should be understood that the Department does make every reasonable attempt to process each inmate's visitor approval request in an efficient and timely manner to help reduce the time when a visiting request is submitted and the actual time the visit takes place.

Comment 8D: Commenter states that the Department should amend the proposed regulations to incorporate an expedited visitation approval process for journalists requesting interviews with inmates, and develop a process by which journalists would not be required to compete with an inmate's other visitors for the limited time available. Commenter provides that the Department could designate a separate time or location within the facility for the interview to take place once the interview request has been granted. Commenter feels that adoption of an alternative visitation procedure would further advance the goal "to protect the personal privacy of other inmates and their family members, as well as preserve a respectful visiting environment..." as cited on page 2 of the Initial Statement of Reasons concerning adoption of subsection 3261.5(b)(2). Commenter states that by removing the interview to a separate location or scheduling a time for the interview that is different than regular visitation, the Department would achieve both aims: protecting privacy and maintaining a respectful visiting environment.

Accommodation: None.

Response 8D: See Commenter 8, Response 8C. In addition, to try and establish a separate media visiting program as requested by the Commenter, especially in times of budget cutbacks and constraints, would require additional staff and resources that are not available to the Department.

Regarding the Commenter's reference to "required to compete with an inmate's other visitors for the limited time available", it is the specific inmate, not the Department, who determines who may be a visitor, pending approval, and which of his or her visitors should have priority.

Comment 8E: Commenter states that while the CNPA is pleased that the Department proposes in subsection 3261.5(b)(2) to allow the use of "three (3) pens, three (3) pencils and one (1) pad of paper into the facility," a journalist would be prohibited from using one of his most important tools – source documents (reporter notes, public records, court documents, news articles, etc.) which are reference materials used most effectively by a journalist to verify or challenge information provided by and inmate or other person. Commenter contends these documents are used extensively in interviews on the outside and would pose no security risk if allowed into prison facilities and urges the Department to amend 3261.5(b)(2) to include source documents in the list of tools news media representatives are allowed to bring into the facility during an interview.

Accommodation: None.

Response 8E: See Commenter #5, Response 5A.

Comment 8F: Commenter states they have serious concerns about proposed subsection 3261.5(c) which provides, “The media representatives or their organization may be required to pay the security or escort costs provided for the interview.” Commenter says it was their understanding that in the past, this provision was used by the Department to recover the costs borne by the state to provide security to film crews who were filming their productions within a prison facility. The definitions used in subsections 3261.5(a)(1) and (2) are for “News media representative” and “Non-news media representative” but there is no definition of “media representative.” Commenter is concerned that this provision, which to their knowledge, has never been applied to a journalist conducting an interview during visitation will now create another barrier, increased costs, to reporters conducting inmate interviews. This would be burdensome for small community newspapers. Commenter proposes that the Department amend proposed subsection 3261.5(h) by amending the provision to specify that the section does not apply to a “News media representative.”

Accommodation: None.

Response 8F: It is generally not the Department’s policy to charge fees to news organizations for the costs of conducting interviews for routine, daily interactions. However, it is a basic requirement for non-news media representatives who may and generally do generate additional costs caused by extended taping for documentaries. This provision preserves the option for the CDCR to be reimbursed for excessive costs in instances, where extended time and research by news organizations borders on the demands of production companies. A recent project involving a major network news organization required taping over several days and at odd hours of the day. This is an example of an instance where fees were charged in order to cover the cost of staff overtime and security.

Comment 8G: Commenter states they are disappointed that the proposed regulations continue to prohibit the use of audio and video equipment during an interview. Commenter cites on page 2 of the Initial Statement of Reasons (new subsection 3261.5(b)(2)), that “because these interviews are done in a visiting room setting and in order to protect the personal privacy of other inmates and their family members, as well as preserve a respectful visiting environment, it is necessary for the Department to not allow audio and video equipment.” Commenter feels that prohibiting the use of these devices by a news media representative to protect the privacy interests of inmates and their families rings hollow in light of the rule regarding the use of video cameras by family members during visitation, specifically, subsection 3170(b) which provides that “Video-recording devices may be utilized in visiting areas, excluding family visiting units or confidential attorney consultation areas.” Commenter states that subsection 3170(b) permits family members to bring video recording devices into visiting areas and does not restrict what, if any, images can be captured by these devices. Journalists would be prohibited from engaging in the very same conduct that would be allowed for non-journalists visiting the facility. Commenter suggests the proposed language be amended to include a provision allowing news media representatives to use audio and video recording devices during an inmate interview.

Accommodation: None.

Response 8G: This section of the regulations pertains specifically to interviews conducted in a visiting room setting and the above comment reflects a misunderstanding of the regulations. News organizations routinely bring the tools of their trade, including audio and video recording devices and cameras, into

institutions during tours and are used in random interviews with inmates. The tools of the trade permitted in a visiting room environment however, are intended to balance the need to accurately record the content of an interview while protecting the privacy rights and the environment of a visiting room. The regulation referred to by the Commenter does not allow video cameras by visitors. It authorizes the use of video surveillance by CDCR to accommodate security needs in visiting rooms. It should be noted that there are signs at the entrance of every institution noting that it is illegal for visitors to bring cell phones, tape recorders, camcorders, cameras or other video equipment into the institution.

15-DAY RENOTICE:

Public comment period was January 28, 2008 through February 15, 2008

A 15-Day Renotice was forwarded to 10 commenters who provided either verbal or written comment during the public comment period. In addition, the Renotice was placed on the Department's internet and intranet websites. Two comments were received.

COMMENTER #1

Comment #1A: Commenter states that on behalf of Crime Victims United of California (CVUC), she is submitting comments and suggestions. Comment provides that the CVUC continues to object to the proposed regulation and its revisions as of January 28, 2008. For years, the CVUC has advocated against allowing media access to prisoners because elevating a criminal to "celebrity" status gives prisoners a chance to once again victimize their victims and victims' families. In addition, giving prisoners additional media access results in the reporting not being balanced and victims' sides are never given equal time. Commenter further provides that since 1998, the CVUC has actively lobbied against media access proposals that did not take into account victim impacts and these regulations continue to ignore victim impacts. The regulations completely ignore the compromise CVUC has achieved in the Legislature whereby victims would have the opportunity to be notified should a request be granted to interview their offender.

Accommodation: None.

Response 1A: Provided in the 15-Day Renotice cover letter, were the directive that only those comments relating directly to the enclosed post-hearing changes that are indicated by bold face type with double underlining and double strikethrough will be considered. It is the Department's contention that the comments provided do not specifically address any of those changes but instead, are generalized or personalized to the extent that no meaningful response to either accommodate or refute the comment can be provided. In addition, this comment language almost matches the comments provided by Public Speaker #1, comments #1 and #2. Based on this, the Department's only other possible response is to see **Public Hearing Comments, Public Speaker #1, Responses 1A and 1B.**

COMMENTER #2

Comment 2A: Commenter states that the comments are submitted on behalf of the California Newspaper Publishers Association and in our previous comments on the originally proposed regulations published August 3, 2007, we urged CDCR to amend the regulations to provide journalists who request to visit an inmate with an expedited approval process. In the January 28 amendments, CDCR has not addressed CNPA's concern that the regulations fail to state the length of time for the Department to decide whether to approve the journalist's visitation application after the journalist's request for an interview has been granted.

Accommodation: None:

Response 2A: See Summaries and Responses of Written Public Comments, Commenter 8, Response 8B.

Comment 2B: Commenter states that as pointed out in their previous comments, the process a journalist must go through to gain access to an inmate via visitation under the regulations, as currently implemented, is lengthy, time-consuming and forces the reporter to wait up to six months before becoming approved as a visitor. This significantly obstructs the newsgathering process because the information that a reporter seeks from an inmate grows stale as they await determination on the visitation application. While the regulations as proposed on August 3 and the amendments published on January 28 require the institution head or the Office of Public and Employee Communications to provide an initial response back within two (2) working days for each media request, the regulation doesn't alter the prolonged process for CDCR to approve the reporter's visitation application that would continue to exist. Commenter proposes that in subsection 3261.1(a) the following be added to the regulatory text, "*The institution head, the Assistant Secretary of Communications or their designee shall approve or deny the journalist as a visitor fourteen working days from the date the media access request for an interview has been granted. Once a journalist is approved as a visitor at one institution, the journalist's approved visitor status shall be recognized at all adult facilities operated by CDCR for a twelve month period from the date the journalist is first approved as a visitor.*" Commenter then provides that these two changes would balance CDCR's desire to process reporters as visitors with the journalist's need to gather and disseminate news in a timely manner. The recognition of a journalist's visitor status for twelve months would eliminate redundancy when the same reporter requests to interview inmates at different facilities and would reduce the burden on CDCR's already strained financial resources.

Accommodation: None.

Response 2B: The first part of the comment with broad generalizations does not address any of the specific changes provided in the 15-Day Renotice, but is instead, very similar to the Commenter's original comment provided during the initial 45-day comment period which is provided in Summaries and Responses of Written Public Comments, Commenter 8, Comment 8B. In response, the Department refers to the responses provided in **Commenter 8, Responses 8A and 8B.**

Concerning the request to amend the regulations allowing "journalists" special access and visiting privileges for all adult facilities operated by the CDCR for a twelve month period, the Department responds by saying that news media and non-news media representatives do not have a priority over family members or other members of the public who do create a visiting relationship with an inmate. In addition, there has been no evidence presented by the Commenter that provides that "journalists" legally have the right of access beyond that afforded the general public. The Commenter clearly misunderstands the nature of a "visitor" status. Visitors are approved individually and for an individual inmate. There is no "visitor" status that applies uniformly to all inmates in all prisons at all times.

Comment 2C: Commenter states in their previous comments, they were pleased that the proposed language included that reporters would be allowed to use most of the tools of their trade, e.g., "three (3) pens, three (3) pencils and one (1) pad of paper into the facility", but the January 28 amendments fail to recognize that a journalist would continue to be prohibited from bringing source documents into a facility for an interview. These papers (reporter notes, public records, court documents, news articles, etc.) are reference materials used most effectively by a journalist to verify or challenge information provided by a person who is interviewed. Source documents are absolutely essential to the journalist and are as

important as pens, pencils and paper in the interview process. Including these documents as permissible tools of the trade would pose no increased security risk if allowed into prison facilities because they would be subject to the same contraband searches that are required of any visitor's effects brought to an institution.

Accommodation: None.

Response 2C: This comment concerning source documents is very similar to the comment provided by the Commenter in Summaries and Responses of Written Public Comments, Commenter 8, Comment 8E. The Department responds by referring to the response provided in **Written Public Comments, Commenter #5, Response 5A.**

2nd 15-DAY RENOTICE:

Public comment period was June 23, 2008 through July 10, 2008

The 2nd 15-Day Renotice was forwarded to the 10 commenters who provided either verbal or written comment during the public comment period. In addition, the 2nd 15-Day Renotice was placed on the Department's website. Two comments were received.

COMMENTER #1

Comment 1A: Commenter states on behalf of Crime Victims United of California (CVUC), they strongly object to the proposed regulation and its revisions as of June 23, 2008. Commenter continues that for years, CVUC has advocated against allowing media access to prisoners because elevating a criminal to "celebrity" status is unacceptable and gives prisoners a chance to once again victimize their victims and victims' families. For a family who has been victimized, watching their family member's perpetrator benefit from the crime is just one more tragic event they have to endure.

Since 1998, CVUC has actively lobbied against media access proposals that did not take into account victim impacts and the revisions to the proposed media access regulations fail to address victim impacts. The regulations completely ignore the compromise CVUC has achieved in the Legislature whereby victims would have the opportunity to be notified should a request be granted to interview their offender.

Accommodation: None.

Response 1A: Provided in the 2nd 15-Day Renotice cover letter, specific directive was provided twice that only those comments relating directly to the changes indicated by regular or italicized **dotted bold underline** and ~~**dotted bold strikethrough**~~ will be considered. It is the Department's contention that the above comment does not specifically address any of those changes but instead, are generalized or personalized to the extent that no meaningful response to either accommodate or refute the comment can be provided.

COMMENTER #2

Comment 2A: Commenter states the comment is being submitted on behalf of the California Newspaper Publishers Association in response to the amendments to the proposed regulations published June 23, 2008, and find the most recent proposal that singles out the news media and subordinates journalists' access to that of the general public to be unjustified and without legal precedent. Commenter points out that specifically, in the June 23 proposed amendments, CDCR amended Section 3261.5(h) to provide

“The news media and non news media representatives or their organization(s) may be required to pay the security or escort costs provided for the interview.”

Commenter continues that when face-to-face interviews were prohibited and the current process was adopted as an emergency regulation in 1996 for journalists to interview prison inmates, CDCR justified the policy change by announcing that it was simply affording journalist the same access to its facilities that the general public had – through inmate visitation and random tours.

Commenter cites the U.S. Supreme Court’s decisions in *Pell v. Procunier*, 417 U.S. 817 (1974) and *Turner v. Safley*, 482 U.S. 78 (1987) (citing Pell) for the authority to use this model to restrict journalists’ access to California prisons.

Commenter states that proposed Section 3261.5(h) does not meet the constitutional standard established by the court in *Pell* because it allows CDCR to recover security costs from a member of the news media but not the public when visiting an inmate or taking a tour. The proposal is silent as to how CDCR will determine the costs of the correctional officers that are stationed in a visitation area or on a random tour nor does it account for the apportionment of these costs when the greatest number of visitors in the area are friends and family or his newspaper has to agree to pay all costs before he attempts to visit the inmate, even if they are unknown at the time of the visit or tour. If the journalist refuses to pay the costs and otherwise complies with all other CDCR regulations and policies, Section 3261.5(h) would allow CDCR to deny the journalist access to the facility.

Commenter closes by stating that in his veto message of Senate Bill 1521, he said “I have directed the California Department of Corrections and Rehabilitation to immediately issue new regulations to implement the provisions of this bill to allow media access, but limit media access to specific violent criminals in order to protect crime victims and their families. SB 1521 contained no provision that could remotely be construed to permit CDCR to recover costs from the news media associated with security or escorts during visitation or a random tour or the idea that the rights of the news media to access prison facilities should be inferior to those of the general public.

Accommodation: None.

Response 2A: The comment period for the 1st 15-Day Renotice, in which section 3261.5(h) was originally amended, closed on February 15, 2008. Section 3261.5(h) was not amended or part of the 2nd 15-Day Renotice. Stated twice in the 2nd 15-Day Renotice cover letter, only those comments relating directly to the changes indicated by regular or italicized **dotted bold underline** and **~~dotted bold strikethrough~~** will be considered. The Commenter has chosen to provide comment upon regulatory text that is closed to comment, therefore the Department will not provide a response to either accommodate or refute the comment. Nonetheless, the Department can also reference to see **Summaries and Responses to Written Public Comments, Commenter 8, Response 8F.**